

### **REMARKS**

Claims 1-3, 5-8 and 20-27 are pending. The Examiner's reconsideration of the rejections is respectfully requested in view of the remarks.

Claims 1-3, 5-8 and 20-25 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Herz et al. (US Patent App. 2001/0014868) in view of Kaminsky et al. (2001/0047308). The Examiner stated essentially that the combined teachings of Herz and Kaminsky teach or suggest all the limitations of Claims 1-3, 5-8 and 20-25.

Claims 1 and 5 are the independent claims.

Claim 1 claims, *inter alia*, “price setting means for dynamically setting a current retail price of said product upon completion of each sale in accordance with rules that specify conditions and parameters to determine changes in the retail price of the product based on the retail sales state information of said product.” Claim 5 claims, *inter alia*, “price setting means for dynamically setting a current retail charge for accessing said digital content upon completion of each access of a unit of the digital content in accordance with rules that specify conditions and parameters to determine the retail charge of the digital content and to determine when to change the retail charge and an amount of change in retail charge of the digital content based on the sales state information of said digital content and with current sales status information of said digital content.”

Herz teaches a method for selecting offers that are likely to result in profitable sales based on methods for predicting which offers a current consumer would be likely to accept (see paragraph [0037]). Herz does not teach or suggest how to perform “dynamically setting a current retail price of said product upon completion of each sale” as claimed in Claim 1, nor

“dynamically setting a current retail charge for accessing said digital content upon completion of each access of a unit of the digital content” as claimed in Claim 5. Herz uses input including profiles, identity and goals of a shopper (see paragraph [0029-0036]). Herz processes the profile data so as to make customized offers to the current customer (see paragraphs [0003] and [0237]). Herz teaches that the price offered to the current customer of is selected specifically for that customer based on profile, identity, and goals, however none of the information used by Herz includes a current retail price or charge determined upon completion of a sale or access. Therefore, Herz fails to teach or suggest all the limitations of Claims 1 and 5.

Kaminsky teaches a system for liquidating inventory using an auction (see Abstract). Kaminsky teaches a pricing strategy having a demand price and a buyer auction scheme (see Abstract), which operates at a level below a retail price. For example, see paragraph [0030], where a consumer is presented with a retail price and a current price - it is the current price that is determined by Kaminsky, which is different than the predetermined retail price. Further, Kaminsky's prices are determined after receiving a number of bids - the prices are determined directly based on bids (see for example, paragraphs [0051-0056]). Thus, similar to Herz, Kaminsky does not teach or suggest a method which determines a price based on history (upon completion of each sale or access) and rather bases price on the current bidders. Therefore, Kaminsky fails to cure the deficiencies of Herz.

The combined teachings of Herz and Kaminsky are directed to methods for determining prices in response to an inquiry or bid of a customer. The combined teachings of Herz and Kaminsky do not teach or suggest determining prices upon completion of each sale or access, essentially as claimed in Claims 1 and 5.

Claims 2-3 and 20-23 depend from Claim 1. Claims 6-8 and 24-25 depend from Claim 5. The dependent claims are believed to be allowable for at least the reasons given for Claims 1 and 5. Reconsideration of the rejection is respectfully requested.

For the forgoing reasons, the application, including Claims 1-3, 5-8 and 20-27, is believed to be in condition for allowance. Early and favorable reconsideration of the case is respectfully requested.

Respectfully submitted,

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